



MULTISTATE TAX COMMISSION
*Working Together Since 1967 to
Preserve Federalism and Tax Fairness*

TO: Commission
FROM: Lennie Collins, Nexus Committee Chair
RE: Annual Report of Nexus Committee Activities
DATE: July 15, 2011

July 1, 2010 – June 30, 2011

**Open Session
Contains no confidential information**

This report reviews Nexus Committee activity in fiscal year 2011 (July 1, 2010 through June 30, 2011). It does not contain confidential taxpayer information.

Committee Activities

The committee met on July 27, 2010 in Hood River, Oregon.

At the meeting the committee heard staff reports about activities of the National Nexus Program and offered general direction to Nexus program staff. Updates and discussion included:

- Oversight of the voluntary disclosure program, including on-going efforts to improve the process for states and taxpayers through technological advancements. The committee approved of staff's efforts to achieve greater efficiency through technology.
- Staff presented information on specific taxpayers and industries that involve nexus issues, which the committee considered. Committee members also raised several issues, which the committee also considered. More information is available in the closed committee report.
- The Commission's Director of Policy Research, Dr. Elliott Dubin, presented the findings of a study he and his research assistant, Ann Boyd, conducted with respect to voluntary disclosure. The study concluded that voluntary disclosure is a cost-effective supplement to other enforcement activities.
- State participation in committee work remains strong, although travel to meetings has been difficult for some.

Voluntary Disclosure Procedures

Most importantly, the Nexus Committee at its July meeting gave its final approval to the Nexus Program's *Procedures of Multi-state Voluntary Disclosure*. Approval was unanimous. Executive Committee members may wish to examine this document, as it is intended to be the rules to govern the Commission's voluntary disclosure program. The Nexus Committee expects that Commission staff will publish these on the Commission's website and that taxpayers will rely upon them. The Committee anticipates that written procedures will increase taxpayer confidence in the program and encourage its use.

In summary, the procedures --

- Do not apply to a state's single-state voluntary disclosure program, but "all member states of the NNP accept these procedures as the state's procedure with respect to multi-state disclosures..." However, states may opt out of any provision with specific notice that they do so. Sect. 4. Commission staff will ensure that all NNP member states understand the procedures and have made an informed choice whether to opt out of one or more provisions before staff posts these for the public to rely on.
- Clarify who is eligible for voluntary disclosure, e.g., not those under audit. Sect. 5.
- Guarantee taxpayer anonymity before an agreement is signed (states with statutes not permitting this may opt out). Sects. 6 and 7.
- Allow taxpayers to complete the disclosure after proper application in the event a state discovers the applicant independently. Sect. 8, 15.
- Prohibit member states (except if they opt out) and the Commission to use voluntary disclosure information for enforcement purposes. Sect. 7.
- Provide certain protections to a taxpayer in the event of mistaken disclosure of its identity to a state or the Commission, e.g., making a payment before an agreement is signed. Sects. 9 – 11.
- If it learns of a material misrepresentation in a voluntary disclosure application, require the Commission to:
 - Notify states that signed the agreement, which may rescind if they choose.
 - Not notify states that did not receive the agreement offer.
 - Withdraw offers without comment from states still considering the offer.
 - Whether to notify these states of the material misrepresentation was a point of debate within the committee. The committee chose this rule because it would not disadvantage multi-state disclosure versus single-state programs in the eyes of potential disclosants

who may be concerned about the Commission's unique ability to notify multiple states (the Commission knows most or all states to which a taxpayer applies, while a single knows only that a taxpayer has applied to it).

- Encourage all parties to pursue disclosures timely. Taxpayers meeting specific deadlines will continue to enjoy the privilege of completing a disclosure in the event a state discovers it independently before the disclosure agreement is signed. Sect. 14. States and the Commission also have specific deadlines, but there are no similar inducements to compliance. Sects. 16 – 18.

The committee met on March 3, 2011 in Denver, Colorado.

At the meeting the committee heard staff reports about activities of the National Nexus Program and offered general direction to Nexus program staff. Updates and discussion included:

- A significant closed-session discussion.
- Oversight of the voluntary disclosure program.
- Review of a re-drafted template contract for voluntary disclosure.

Nexus School

Nexus and Legal staff taught two nexus schools during the period, one in Helena, Montana, and the other in Denver, Colorado. Each was well attended. Staff had updated a portion of the material in advance of each school.

Multi-state Voluntary Disclosure

Multi-state voluntary disclosure has produced \$11,884,837* for states this fiscal year.

* The annual collection amount includes only back tax actually collected (cash basis). It may also contain a trivial amount of penalty, interest, and miscellaneous fees if they were collected before conclusion of the voluntary disclosure. It does not include any tax, interest, penalty, or other thing of value collected after the voluntary disclosure process ended. States almost always collect substantial interest on back tax amounts after the end of the voluntary disclosure process, but the Commission does not include these amounts in its reports.